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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY RAY GRAY,

Defendant and Appellant.

C085112

(Super. Ct. No. CM041449)

Appointed counsel for defendant Billy Ray Gray has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Defendant filed a supplemental brief asserting the trial court erred in refusing to reduce his felony conviction for petty theft with prior sex offender registration

requirement (Pen. Code, §§ 666, subd. (b), 290),¹ pursuant to Proposition 47 (§ 1170.18). Defendant's contentions are without merit. After reviewing the record, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On July 2, 2014, defendant was in a supermarket when he stuffed two skin care products into his pants and left without paying. The merchandise was worth \$23.48.

On July 7, 2014, defendant was charged with petty theft with prior section 290 registration requirement, based on a 1998 juvenile adjudication of rape of a spouse (§ 262, subd. (a)(3); defendant was age 15 at the time). (§ 666, subd. (b); count 1.) It was further alleged defendant had three prior prison commitments (§ 667.5, subd. (b)) and a prior strike conviction (§§ 667, subd. (d), 1170.12, subd. (b)). On July 23, 2014, defense counsel declared a doubt as to defendant's competence and proceedings were suspended pursuant to section 1368 et seq.

On January 21, 2015, based on a report from staff at Napa State Hospital opining that defendant was competent to stand trial, the trial court found defendant competent and reinstated criminal proceedings.

On April 8, 2015, the trial court denied defendant's request to treat count 1 (§ 666, subd. (b)) as a misdemeanor pursuant to Proposition 47. Defendant pleaded no contest to count 1 and admitted he suffered a prior prison term (§ 667.5, subd. (b)). The trial court dismissed the remaining allegations with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, 758.

¹ Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

On July 1, 2015, the trial court suspended imposition of sentence and placed defendant on 36 months of probation. Defendant waived his custody credits against a subsequent state prison sentence. (*People v. Johnson* (1978) 82 Cal.App.3d 183.) The trial court imposed a \$300 restitution fine (§ 1202.4, subd. (b)) and a corresponding \$300 probation revocation fine, suspended (§ 1202.44). In addition, the trial court imposed a \$850 fine, consisting of: a \$200 general fine (§ 672), a \$40 court surcharge (§ 1465.7), a \$200 state penalty assessment (§ 1464), a \$140 county penalty assessment (Gov. Code, § 76000), a \$20 DNA identification fund fee (Gov. Code, § 76104.6), an \$80 DNA identification fund fee (Gov. Code, § 76104.7), a \$30 conviction assessment fee (Gov. Code, § 70373), a \$40 court security fee (§ 1465.8), and a \$100 court construction penalty, which the court identified as pursuant to section 1465.7. The trial court further imposed a \$39 fine, consisting of: a \$10 theft fine (§ 1202.5), a \$2 court surcharge (§ 1465.7), \$5 court facilities fee (Gov. Code, § 70372), a \$10 penalty assessment (§ 1464), a \$7 county penalty assessment (Gov. Code, § 76000), a \$1 DNA identification fund fee (Gov. Code, § 76104.6), and a \$4 DNA identification fund fee (Gov. Code, § 76104.7). The trial court also imposed a \$25 administration fee. (Gov. Code, § 29550, subd. (c).)

In December 2016, defendant admitted to violating probation. The trial court imposed 45 days of custody and reinstated probation. In January 2017, the trial court denied defendant's petition under section 1170.18 to reduce his conviction on count 1 (§ 666, subd. (b)) to a misdemeanor. Defendant renewed his petition for reduction and the trial court denied it in April 2017.

In May 2017, defendant admitted to violating probation. In July 2017, the trial court denied defendant's renewed petition to reduce his conviction on count 1 to a misdemeanor. In addition, the trial court imposed two years for count 1 (§ 666, subd. (b)) and one year for the prior prison term (§ 667.5, subd. (b)), for an aggregate term of three years in state prison. In addition to ordering that the previously imposed fines remain,

the trial court imposed a \$300 parole revocation fine (§ 1202.45) and a \$286 presentence report fee (§ 1203.1, subd. (b)). The trial court awarded 297 days' credit.

Defendant filed a timely appeal. He did not seek a certificate of probable cause.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief arguing the trial court erred in imposing a felony sentence for his section 666 conviction, since his sex offender registration requirement is based on a juvenile adjudication that occurred when he was 15 years old. Defendant relies on *People v. Fernandez* (2017) 11 Cal.App.5th 926, 937, for the proposition that a juvenile adjudication is not a disqualifying “conviction” under section 1170.18 when the conditions in section 667, subdivision (d)(3), are not satisfied, such as if the juvenile was 15 years old at the time he committed the prior offense.

Under section 666, subdivision (b), a person who is “required to register pursuant to the Sex Offender Registration Act [§§ 290-290.024]” is ineligible to have his petty theft with a prior be reduced to a misdemeanor. Courts have made clear that a prior juvenile adjudication resulting in a sex offender registration requirement still renders a person ineligible for resentencing pursuant to section 666 because the “[j]uvenile sex offender registry is a part of the Sex Offender Registration Act.” (*People v. Dunn* (2016) 2 Cal.App.5th 153, 155-156; see also § 290.008.)

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

We did, however, find a clerical error that requires correction. The trial court imposed a \$100 court construction penalty on the \$200 general fine (§ 672). Although the court identified its authority to impose this fine as section 1465.7, such a fine is

mandatory under Government Code section 70372. In the interests of judicial economy, we shall modify the judgment to correctly state the authority for this fine.

DISPOSITION

The judgment is modified to identify the authority for the \$100 court construction penalty as pursuant to Government Code section 70372, as opposed to section 1465.7.

The judgment is affirmed.

/s/
MURRAY, J.

We concur:

/s/
BUTZ, Acting P. J.

/s/
RENNER, J.